

METROPOLITAN DEVELOPMENT COMMISSION

DOCKET NUMBERS:

Original: 88-AO-5 (G.O. 122, 1988)

Amending: 92-AO-5 (G.O. 41, 1992)

93-AO-6 (G.O. 165, 1993)

THE ENFORCEMENT AND REMEDIES

ZONING ORDINANCE

OF MARION COUNTY, INDIANA

**Code of Indianapolis and Marion County,
Appendix D, Part 26**

ADOPTED:

CITY-COUNTY COUNCIL: December 13, 1993

**Department of Metropolitan Development
Neighborhood and Development Services Division**

**METROPOLITAN DEVELOPMENT COMMISSION
DOCKET NUMBERS: 88-AO-5, 92-AO-5,
93-AO-6**

**CITY-COUNTY ORDINANCE NUMBERS:
G.O. 122, 1988, G.O. 41, 1992, G.O. 165, 1993**

A GENERAL ORDINANCE amending Marion County Council Ordinance No. 8-1957, as amended, and fixing a time when the same shall take effect.

WHEREAS, I.C. 36-7-4 establishes a single planning and zoning authority in counties which have consolidated cities and grants certain powers relative to the zoning and districting of land to the Metropolitan Development Commission and City-County Council of such counties in order to unify the planning and zoning functions thereof: and

WHEREAS, I.C. 36-7-4 empowers the Metropolitan Development Commission of Marion County, Indiana to recommend to the City-County Council and ordinance or ordinances for the enforcement of zoning or districting of all lands within Marion County to the end that adequate light, air convenience of access and safety from fire, flood and other danger may be secured; that congestion in public ways may be lessened or avoided; that the public health, safety, comfort, morals, convenience and general welfare may be promoted; and

WHEREAS, the fundamental rights against unreasonable searches and seizures are protected by the Fourth and Fourteenth Amendments to the Constitution of the United State and by Article I of the Constitution of the State of Indiana; and

WHEREAS, the Metropolitan Development Commission or any designated enforcement official in exercising the police power of the municipality may involve any legal, equitable or special remedy for the enforcement of I.C. 36-7-4 or any ordinance adopted or action taken under I.C. 36-7-4; now, therefore:

**NOW, THEREFORE BE IT ORDAINED BY
THE CITY-COUNTY COUNCIL OF THE CITY OF INDIANAPOLIS
AND OF MARION COUNTY, INDIANA:**

SECTION 1. That Marion County Council Ordinance No. 8-1957, as amended pursuant to I.C. 36-7-4, be amended as follows:

SECTION 1 STATEMENT OF PURPOSE

An amendment to the Marion County Council Ordinance No. 8-1957, as amended, Zoning Ordinance for Marion County, Indiana, is hereby remedial and shall be construed in such a manner as to effectuate its purpose of promoting the public health, safety, comfort, morals, convenience and general welfare by enforcement of all zoning ordinances for all lands within Marion County, Indiana.

SECTION 2 DEFINITIONS

- A. **ADMINISTRATOR** means the Administrator of the Division of Development Services of the Department of Metropolitan Development of the Consolidated City of Indianapolis.
- B. **DESIGNATED
ENFORCEMENT
ENTITY** means the Metropolitan Development Commission of Marion County, Indiana.
- C. **INOPERABLE
MOTOR VEHICLE** means: (1) a motor vehicle from which there has been removed the engine, transmission or differential or that is otherwise partially dismantled or mechanically inoperable, or (2) any motor vehicle which cannot be driven on a city street without being subject to the issuance of a traffic citation by reason of its operating condition or the lack of a valid license plate.
- D. **INSPECTORS** mean employees of the Division of Development Services authorized by the Administrator, to enter, examine and survey all lands within Marion County to accomplish the enforcement of all zoning ordinances and land use regulations of Marion County.
- E. **LAND USE
PETITION** means a rezoning petition, variance petition, approval petition, special exception petition, or any other petition permitted by the Rules of Procedure adopted by the Metropolitan Development Commission or Marion County or the Metropolitan Board of Zoning Appeals.
- F. **SITE IMPROVE-
MENT** means the erection, construction, placement, repair, alteration, conversion, removal, demolition, maintenance, moving, razing or remodeling of any new or existing structure or any part thereof any activity for which an Improvement Location Permit is required.

- G. **ZONING** mean the districts depicted by the Comprehensive Zoning Maps of Marion County, Indiana.
 DISTRICTS

SECTION 3 JURISDICTION

- A. The Metropolitan Development Commission of Marion County may institute a suit for injunctive and monetary relief in the Municipal, Circuit, or Superior Courts of Marion County, Indiana; said suit is to be brought in the name of and captioned as "The Metropolitan Development Commission of Marion County, Indiana" versus the person, persons or entity charged with violating the provisions of any zoning ordinance or land use regulations of Marion County, Indiana.
- B. The Metropolitan Development Commission may also institute a suit for mandatory injunction directing a person, persons or entity to remove a structure erected in violation of any zoning ordinances or land use regulations of Marion County, Indiana.
- C. A structure erected, raised, or converted, or land or premises used in violation of any zoning and land use ordinance of Marion County, Indiana, shall and hereby is declared to be a common nuisance and the owner or possessor of the structure, land, or premises shall be liable for maintaining a common nuisance pursuant to I.C. 36-7-4-1012.

SECTION 4 INSPECTION OF PROPERTY; RIGHT OF ENTRY

- A. the Administrator and inspectors are authorized to make inspections of all lands located within Marion County in order to enforce all zoning ordinances and land use regulations of Marion County, Indiana.
- B. In order to execute inspections, the Administrator or inspectors shall have the right to enter upon any premises at any reasonable time for the purpose of carrying out his/her duties in the enforcement of zoning ordinances and land use regulations of Marion County, Indiana, unless the owner or occupant of the premises refuses to permit entry to the Administrator or inspectors when such entry is sought pursuant to this Section. In the event of said refusal, the Administrator may make application to any judge of the Municipal, Circuit or Superior Courts of Marion County, Indiana for the issuance of an administrative search warrant. Such application shall identify the premises upon which entry is sought and the purpose for which entry is desired. The application shall state the facts giving rise to the belief that a condition which is violation of a zoning ordinance or land use regulation of Marion County, Indiana exists on such premises, or that a

violation in fact exists and must be abated, and that the condition or violation is not a lawful nonconforming use to the best of the affiant's belief. Any warrant issued pursuant to such application shall order such owner or occupant to permit entry to the Administrator or inspectors for the purposed state therein. In no event shall the Administrator or inspectors have the right to enter residential structure or other structures not open to the public without the permission of the owner or occupant or and administrative search warrant first obtained. Prior to entering such residential structure or other structure not open to the public, the Administrator or inspector shall advise the owner or occupant that such owner or occupant is not required to grant entry without the presentation of an administrative search warrant.

SECTION 5 STOP-WORK ORDER

- A. The Administrator or his duly authorized designee is empowered to issue an order requiring the suspension of land improvement of any kind when any of the following circumstances exist:
1. Site improvement is occurring without an Improvement Location Permit or any other permit required by zoning ordinance having first been obtained;
 2. Site improvement is occurring in violation of the terms or conditions of any special exception or variance granted under the metropolitan development law as contemplated by I.C. 36-7-4; in violation of conditions imposed by the plat committee under the metropolitan development law; in violation of covenants made in connection with the platting of a subdivision that is approved by the plat committee; in violation of commitments made in accordance with I.C. 36-7-4-607 or I.C. 36-7-4-921; or in violation of the terms, conditions or provisions of any Marion County zoning ordinance; and
 3. Site improvement is occurring for which a Certificate of Appropriateness from the Indianapolis Historic Preservation Commission is required pursuant to I.C. 36-7-11.1-1 et seq., without a Certificate of Appropriateness have first been issued.
- B. The stop-work order shall be posted on the property in a conspicuous place, or personally delivered to the owner, possessor, or person in charge and state the conditions under which construction or other activity may be resumed. The Administrator or his duly authorized designee shall meet with the recipient of a stop-work order upon request to explain the conditions under which construction or other activity may be resumed.

- C. The designated enforcement entity may institute a suit in a court of competent jurisdiction to enforce the provision of a stop-work order.

SECTION 6 CIVIL ZONING VIOLATIONS

- A. It shall be unlawful for any person who is the owner or contract vendee of, or who has a possessory interest in, real property located in Marion County to cause, suffer or allow any of the following civil zoning violations to occur on such property:
1. The location, erection, or maintenance of any sign not specifically permitted by the Sign Regulations of Marion County, Indiana;
 2. The failure to obtain an Improvement Location Permit when one is required by the terms and provisions of the Improvement Location Permit Ordinance of Marion County, Indiana;
 3. The outdoor storage of junk, trash, or debris in any zoning district the provisions of which do not specifically permit such a use;
 4. The outdoor storage of inoperable motor vehicles or motor vehicle parts in any zoning district the provisions of which do not specifically permit such a use;
 5. The parking or storage, in any zoning district the provisions of which do not specifically permit such a use, of any motor vehicle used or designed (a) for use in pulling, towing, hauling, transporting, or (b) as a temporary or permanent base, platform or support for equipment, machinery, materials or other goods. This provision shall include but not be limited to school buses, buses used for public transportation, stake body trucks, dump trucks, trucks or tractors having dual rear wheels or more than two (2) axles, semi-trailer tractors, semi-trailers and trailers having dual rear wheels or more than one (1) axle or having an overall length of more than twelve (12) feet. However, this provisions does not apply to motor vehicles which do not exceed the three-quarter ton load classification in size and which are the sole vehicular transportation for a resident of the property upon which the commercial motor vehicle is parked or stored;
 6. The outdoor storage or display of merchandise or goods in any zoning district the provisions of which do not specifically permit such a use or in violation of zoning district development standards regulating said use;

7. The conduct of any activity in a dwelling zoning district, not specifically enumerated as a permitted primary or accessory use in that zoning district, and which activity has not been legally established by a currently valid variance, special exception or other approval grant;
 8. Failure to comply with zoning district development standards, including but not limited to landscaping, paving or striping of parking areas, minimum parking space requirements, dumpster enclosure, fencing or screening requirements;
 9. The failure to comply with the terms, provisions, conditions or commitments of a variance grant, special exception, rezoning ordinance, or other approval grant; and
 10. The violation of a Stop Work Order issued pursuant to Section 5.
- B. Each day a civil zoning violation remains uncorrected constitutes a second or subsequent violation. It shall be a defense to an action to enforce a civil zoning violation that the use or activity alleged to be a civil zoning violation is a legally established nonconforming use.

SECTION 7 CIVIL ZONING VIOLATIONS; ENFORCEMENT

- A. The first civil zoning violation in any calendar year shall be subject to admission of violation and payment of the designated civil penalty through the ordinance violations bureau in accordance with Chapter 103 of the Revised Code of the Consolidated City and County.
- B. In addition to the procedures listed in Chapter 103 of the Revised Code, a person who has been cited for a violation of this section may elect to file a land use petition. The filing of a land use petition, or subsequent issuance of a variance, special exception, rezoning or other approval of the land use petition, shall not constitute a defense of any civil zoning violation which occurs prior to the issuance of the variance, special exception, rezoning or other approval.
- C. All second and subsequent violations in the calendar year are subject to the enforcement procedures and penalties provided in Sec. 1-8 of the Code of Indianapolis and Marion County, Indiana.

SECTION 8 CONFLICT OF ORDINANCE; SEVERABILITY, PARTIAL
INVALIDITY

- A. If this amendment is in conflict with any existing ordinance, or any amendment thereof, the one which establishes a higher standard for promotion and protection of public health, safety, comfort, morals, convenience, and general public welfare overrides the other.
- B. If for any reason any article, division, section, subsection, sentence, clause, phrase, or word of this ordinance should be declared unconstitutional or invalid for any reason whatsoever, such decision shall not effect the remaining portions of this ordinance which shall remain in full force and effect; therefore, the provisions of this amendment are hereby declared severable.

SECTION 2. This ordinance shall be in full force and effect upon adoption and compliance with I.C. 36-3-4-14.

CITY-COUNTY COUNCIL OF INDIANAPOLIS
AND OF MARION COUNTY, INDIANA

President

ATTEST:

DATE: July 20, 1992; December 13, 1993

Clerk